

The Commonwealth of Massachusetts

ANNUAL REPORT

OF THE

Commissioners on  
Uniform State Laws

FOR THE

YEAR ENDING NOVEMBER 30, 1938



# The Commonwealth of Massachusetts

## THIRTIETH ANNUAL REPORT OF THE COMMISSIONERS ON UNIFORM STATE LAWS

*To His Excellency the Governor and the Honorable Council of the Commonwealth of Massachusetts:*

In compliance with General Laws we have the honor to submit herewith our Annual Report for the year ending November 30, 1938.

The Commissioners throughout the year were Joseph F. O'Connell, Chairman and Secretary, Willard B. Luther and Henry Parkman, Jr. All are serving under appointments expiring October, 1939.

### HISTORICAL SURVEY

In 1890 New York passed an Act appointing "Commissioners for the promotion of uniformity of legislation in the United States". In the same year the American Bar Association recommended similar appointments in all States. Massachusetts first appointed commissioners in 1909 pursuant to Chapter 416 of the Acts of that year. There are now commissioners for every State, the District of Columbia, Alaska, Hawaii, Puerto Rico and the Philippine Islands.

It is not the purpose of the conference to make all laws uniform in all States. This would be both impossible and undesirable. It is its purpose to make uniform the large number of laws which exist in every State dealing with matters which are common to all States, especially where these affect transactions in which citizens of more than one State may be involved. The Negotiable Instruments Act is perhaps the best example and has been adopted by every one of the fifty-three jurisdictions. It also suggests model acts on laws of general, though not universal, importance.

### RESULTS

Since its formation the conference has approved seventy-five different Acts, many of which have been adopted by a considerable number of States. Massachusetts has adopted the following twenty-one acts:

Acknowledgments (1910); Bills of Lading (1910); Child Labor (1913); Cold Storage (1912); Desertion and Non-Support (1911); Federal Tax Lien Registration (1927); Foreign Executed Wills (1911); Foreign Probated Wills (1911); Fraudulent Conveyances (1924); Limited Partnership (1923); Marriage and Marriage License (1911); Marriage Evasion (1913); Narcotics (1935); Negotiable Instruments (1898); Partnership (1922); Sales (1908); Stock Transfer (1910); Trust Receipts (1936); Warehouse Receipts (1907); Extradition of Criminals Act (1937); Attendance of Witnesses from Without a State in Criminal Proceedings Act (1937).

### CONFERENCE OF 1938

The forty-eighth Annual Conference was held at Cleveland, Ohio, July 18-23, 1938, with the largest attendance in its history. Massachusetts was represented by all its Commissioners. The Conference elected the following officers:

Alexander Armstrong of Maryland, President  
E. E. Brossard of Wisconsin, Vice President  
Murray M. Shoemaker of Ohio, Treasurer  
Barton H. Kuhns of Nebraska, Secretary

The Conference finally approved and recommended the following Uniform Acts:

Absentee's Property	Common Trust Fund
Air Flight	Estates
Air Jurisdiction	Property
Aviation Liability	Unauthorized Insurers

A number of other Acts were considered and referred to the next Conference.

#### ASSIGNMENTS OF COMMISSIONERS

During the past year Commissioner O'Connell has been Chairman of the Committee on Compacts and Agreements between States; Commissioner Luther a member of the Property Acts Section and Committee on Scope and Program; and Commissioner Parkman a member of the Civil Procedure Section, and of the Legislative and Legislative Drafting Committees. For the coming year the assignments are:

*Commissioner O'Connell:* Chairman of Committee on Compacts and Agreements between States.

*Commissioner Luther:* Committee on Scope and Program. Property Acts Section.

*Commissioner Parkman:* Legislative Committee. Legislative Drafting Committee. Civil Procedure Acts Section.

#### RECOMMENDATIONS OF COMMISSIONERS

In 1938 upon recommendation of the Commissioners the General Court considered:

*Uniform Criminal Statistics Act:* This was referred to the next annual session. In view of this action the Commissioners do not again recommend it.

*Uniform Trust Act:* This was approved by the Conference in 1937 after study covering several years. It was referred to the Judicial Council and the Commissioners again recommend it to the General Court for 1939. To a considerable extent it is declaratory of our existing law but contains certain additional features including: (1) Permitting corporate trustees to deposit in their own commercial departments trust cash awaiting investment or distribution, provided it be adequately secured, this being in line with regulations now applying to national banks; (2) Allowing a majority of trustees to act; and (3) Permitting the Court in proper cases to relieve a trustee from personal responsibility for individual losses where the administration of the trust as a whole has been honest and beneficial.

The Commissioners also recommend:

*Uniform Common Trust Fund Act:* This was approved by the Conference in 1938 and supplements the Trust Act just referred to. Under existing Federal regulations national banks are permitted to invest funds of separate trusts of which they are trustee in a common trust fund, this being a convenient form for the administration of small trusts. The proposed act gives to trust companies the same privilege that national banks now have. A special act (Chapter 248 of Acts of 1938) gave similar powers to the Massachusetts Hospital Life Insurance Company and thus approves the general principle underlying this Act.

*Uniform Risk of Loss Act:* This was recommended to the General Court of 1936, was passed by it but was vetoed by the Governor. It is again recommended because it is believed to rectify an important omission in the law regarding sales of real estate, which as to personal prop-

erty was cured years ago. At present, if a building burns or is otherwise destroyed or damaged between the time when a contract for its sale has been entered into and the time when the purchaser would take title or possession the purchaser is compelled to take the damaged property and pay the full price. The proposed act would cure this injustice. It was drafted and sponsored by Samuel Williston, Emeritus Professor of the Harvard Law School, for many years a Commissioner of Massachusetts and the world authority on the law of sales.

Although with the adoption of biennial sessions, it will probably be two years before the Commissioners can make further recommendations they have limited their present suggestions to the foregoing three acts, because they hope during the session to add to these recommendations the three aviation acts already referred to: Aviation Liability, Air Flight and Air Jurisdiction. These are timely and highly important statutes, but have not yet been released by the Conference in their finally approved form.

#### APPROPRIATION

The Commissioners serve without compensation, but have an annual appropriation for traveling and other disbursements, including a contribute set by Statute at not over \$200 for the maintenance of the Conference. For 1938 the appropriation was \$750. For 1939 the Commissioners recommend \$1,200, as the conference will be in San Francisco entailing heavy traveling expenses.

Respectfully submitted,

JOSEPH F. O'CONNELL, *Chairman*

WILLARD B. LUTHER

HENRY PARKMAN, JR.